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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,644	01/02/2004	Alicia Bythewood	AB-2-js	1605
7590	12/30/2004			
Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791				
			EXAMINER AMERSON, LORI BAKER	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)	
	10/290,737	CLARK, CLARENCE EDWARD	
	Examiner	Art Unit	
	L. Amerson	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11/8/02.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 20 is/are rejected.
- 7) ☒ Claim(s) 14 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 12 is objected to because of the following informalities: line 3, "with the with the" should read --with the--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

- a. Claims 1, 4-5, 7-8, and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Lull et al. Lull et al disclose an apparatus having a supporting structure (42) with a bench platform (72), a drive assembly (fig. 5), a resistance (52) and a primary drive member (48) having a user contact pad (178).

Regarding the language "for supporting at least a portion of a user's torso such that the user's body weight is primarily supported by the supporting structure", "positioned relative to the torso supporting structure", "such that the user contact pad is moveable between a first position wherein the user contact pad is located proximate to and above the support bench platform and a second position wherein the user contact pad is spaced from and approximately co-planar with the support bench platform, wherein movement of the primary drive member user contact pad from the first position to the second position causes the drive assembly to move against the resistance" has not been given patentable weight

because the limitations are purely functional in nature and do not recite any structure. As to claims 4 and 20, the supporting structure is pivotal (fig. 2). As to claims 5 and 8, comprising a pair of primary drive members associated with the assembly (fig. 3-4). As to claim 7, see the paragraph for claim 1.

Additionally, Regarding the language, in lines 4-11 of claim 7 has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

b. Claims 6, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lull et al. Lull et al disclose all of the limitations of the claimed invention except for a secondary drive member. Regarding the language "such that the opposed secondary drive members are configured to simultaneously or independently move the resistance" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate another pair of drive members such that an additional assembly of drive members provide additional resistance to the user while exercising. As to claim 10, see the rejection above. Additionally, the

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path of the drive member is arcuate. As to claim 11, see the rejection above.

Additionally, the language has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure.

***Allowable Subject Matter***

4. Claims 2-3, 12-14 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Justine Yu. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
L. Amerson